

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1: 17 MJ 9011
)	
Plaintiff,)	CHIEF JUDGE SOLOMON OLIVER, JR.
)	MAGISTRATE JUDGE
)	WILLIAM H. BAUGHMAN, JR.
v.)	
)	<u>GOVERNMENT'S MOTION TO</u>
PHILLIP R. DURACHINSKY,)	<u>EXTEND TIME FOR RETURNING</u>
)	<u>INDICTMENT</u>
Defendant.)	

The United States of America, by and through its counsel, David A. Sierleja, Acting United States Attorney, and Daniel J. Riedl, Assistant U.S. Attorney, respectfully moves this Court to extend the time for filing an information or indictment until July 24, 2017, per Order granted on May ____, 2017, for the reasons set forth in the attached Memorandum.

Respectfully submitted,

DAVID A. SIERLEJA
Acting United States Attorney

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MEMORANDUM

A.

On January 24, 2017, a criminal complaint (Case No. 1: 17 MJ 9011) was filed against defendant, Phillip R. Durachinsky, charging the defendant with a violation of federal law, that is intentionally causing damage without authorization, to ten or more protected computers. The defendant appeared before United States Magistrate Judge William H. Baughman on January 25, 2017, after having been arrested pursuant to the complaint. At the time of the initial appearance, Defendant waived his probable cause and detention hearing, was remanded to the custody of the U.S. Marshal's Service, and the matter was bound over to the grand jury. On January 26, 2017, the Government filed a Motion for Extension of Time to Indict. (R.6: Motion; PageID 16). The motion included a signed waiver by the Defendant in which he waived his time to indict up to and including March 26, 2017. (R.6-1: Waiver; PageID 21). The motion was granted on January 27, 2017. (R.8: Order; Page ID 25). On March 23, 2017, the Government filed a second Motion for Extension of Time to Indict. (R.12: Motion; PageID 31). The motion included a signed waiver by the Defendant in which he waived his time to indict up to and including May 25, 2017. (R.12-1: Waiver; PageID 36).

B.

Title 18, Section 3161 of the United States Code provides that an "information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges." 18 U.S.C. § 3161(b). In the instant prosecution, the previously granted extension allows the government to file an indictment or information on or before May 25, 2017.

The government submits that a limited extension of the time for filing an information or indictment will serve the ends of justice by affording the parties a meaningful opportunity to search the computers seized from defendant, allow defense counsel an opportunity to review the computer evidence and other evidence in this case, and permit meaningful discussions regarding the resolution of this matter. As of the date of this filing, the government is still in the process of imaging and searching the computers (the primary evidence in this case) seized from Defendant; the results of which will play a significant role in the charging decisions made by the government. The computers and external hard drive seized by the government from defendant contain in excess of twenty million files. The sheer magnitude of the undertaking of the computer forensic searches necessitates additional time for the government to conduct a thorough search and time for the defense to assess the evidence to determine whether a plea to an Information may be in Defendant's best interest. It is anticipated that the parties will use the proposed extension of time to ascertain as many of the relevant facts as possible, which if accomplished, will serve the interests of justice by potentially rendering grand jury presentation and/or a trial more complete or unnecessary. See United States v. Fields, 39 F.3d 439, 445-46 (3d Cir. 1994) (approving "ends of justice" continuance to allow negotiations to continue). See also United States v. Lewis, 980 F.2d 555 (9th Cir. 1992). If grand jury presentment proves necessary, the proposed extension of time will serve the ends of justice and promote efficiency by allowing the grand jury panel to consider a full panoply of potential charges and will allow for the streamlined presentation of evidence offered in support of those charges.

Undersigned government counsel has spoken with Ronald Frey, counsel for defendant, concerning this matter, and is advised that the defense has no objection to the proposed

continuance. The defendant and Mr. Frey have executed a Speedy Trial waiver which is attached for the court's consideration.

For all of the foregoing reasons, the government, pursuant to 18 U.S.C. § 3161(h)(7)(A), respectfully moves this Court to extend the time for filing an information or indictment from May 25, 2017, until July 24, 2017, and to enter a finding under that section that the ends of justice are served by taking such action, and that this continuance outweighs the best interest of the public and the defendant in a speedy trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May 2017, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Daniel J. Riedl

Daniel J. Riedl

Assistant U.S. Attorney